

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ROBERT C. DIEHL, III

v.

STEVEN KENNEDY AND  
MOTION HOLDINGS, LLC

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: Civil Action No. DKC 2006-1055

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**MEMORANDUM OPINION**

Defendants filed a motion to exclude testimony of Robert A. Smith, M.D., Joye Carter, M.D., and Thomas C. Borzilleri, Ph.D., on the ground that Plaintiffs had not complied with the requirements for expert witness disclosures. While Plaintiffs had named the experts and provided a brief Rule 26(a)(2) disclosure, no reports had been provided. Plaintiffs' opposition was accompanied by written reports from each of the witnesses. Defendants' reply now contends that the reports are incomplete and provide insufficient factual basis for any opinions contained therein.

The original basis for the motion to exclude was the absence of any report. That ground is moot inasmuch as Plaintiffs have now provided the reports, albeit late. Defendants contend they are inadequate, but that argument was made, of necessity, for the first time in the reply memorandum. Rather than direct the parties to engage in another round of motion practice concerning the adequacy of the reports, the court will deny Defendants' motion to exclude, provide Defendants with additional time to depose the experts, and

make their own expert disclosures. The court will reserve on any requests for shifting expenses. A separate order will be entered.

                    /s/                      
DEBORAH K. CHASANOW  
United States District Judge